

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS  
2 FAMILY DIVISION

3  
4 CAUSE NO: FAM 0177/2013  
5

6 IN THE MATTER OF AN APPEAL UNDER SECTION 4 AND 38 OF THE LEGAL AID  
7 LAW 2015 REVISION

8 AND IN THE MATTER OF FAM 177 OF 2013

9  
10 TAKEN ADMINISTRATIVELY "ON THE PAPERS" WITHOUT A HEARING



11  
12 BETWEEN:

13 CMS

PETITIONER

14  
15  
16 AND:

17 RGS

APPLICANT/RESPONDENT

18  
19  
20  
21  
22 Appearances:

No appearance required by, or on behalf of, the  
Petitioner

23  
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25 No appearance required by, or on behalf of, the  
26 Applicant/Respondent

27 Before:

Justice Marlene Carter (Actg.)

28 Applicant's Written Submissions:

29 29<sup>th</sup> August 2017  
30  
31

32 HEADNOTE

33 *Legal Aid Law (2015 Revision) – Sections 4 and 38 - Reconsideration of Legal*  
34 *Aid application - Issues arising: Sole Residence, Costs, Temporary removal of*  
35 *child from jurisdiction.*  
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**JUDGMENT**

- 3 1. The Applicant first applied for a Legal Aid Certificate (LAC) on the 13<sup>th</sup> July 2017.
- 4 2. The application was considered by the then Acting Director of Legal Aid and the  
5 application was refused on the 8<sup>th</sup> August 2017.
- 6 3. The Acting Director gave as her reason for the refusal that:

7 *“At this stage of the proceedings, the Respondent can effectively communicate his*  
8 *position to the Grand Court. “*

- 9 4. The Applicant was advised of his right to seek a reconsideration of the Acting  
10 Director’s decision.
- 11 5. The Director of Legal Aid (“the Director”) reconsidered the application and advised  
12 the Applicant on the 10<sup>th</sup> August 2017 that his application was again denied. The  
13 Director concluded on the application:

14 *“In summary, the Applicant’s request for reconsideration of this legal aid*  
15 *application has been made and the same is denied for an order to remove he child*  
16 *from the jurisdiction temporarily and to discharge previous costs orders. The*  
17 *matter of varying to residence order made in November 2016 is deferred for the*  
18 *applicant to provide further and better details to support that his issue has a*  
19 *reasonable prospect of succeeding on the merits of his claims.”*



1 6. The Applicant was advised of his right to appeal the Director’s decision under s.38 of  
2 the Legal Aid Law 2015 Revision (“the Law”).

3 7. The Applicant set out three specific issues upon which he seeks assistance by way of  
4 the legal aid certificate and the Director addressed each in turn.

5 **ISSUE 1: AN ORDER TO OBTAIN SOLE RESIDENCE OF THE MINOR CHILD**

6 8. The Legal Aid Law (“the Law”) states::

7 “38. *An applicant or an assisted person may appeal to a judge in*  
8 *chambers where-*

9 *a. he is refused a legal aid certificate;*

10 *b. ....”*

11  
12 9. The Director, upon her reconsideration of the initial decision, has not refused the LAC  
13 on this aspect of the application.

14 10. In refusing the application the Director expressed that the Applicant could adequately  
15 address the issue himself and that:

16 *“...the reasons provided by the applicant are not detailed or sufficient to justify the*  
17 *expenditure from the Legal Aid Fund”.*

18 However, the Director went on further to express that:

19 *“If the applicant can provide a report made to or by DCFS or additional*  
20 *supporting documents on the specific issue during the period November 2016 to 13*  
21 *July 2017 then reconsideration will be given to this point only.”*

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1 The Director further indicated that:

2 *"The matter of varying to residence order made in November 2016 is deferred for*  
3 *the applicant to provide further and better details to support that this issue has a*  
4 *reasonable prospect of succeeding on the merits of his claims."*

5 11. There is therefore no need for me to consider this issue further since the Applicant has  
6 *not* been refused a LAC in respect of that part of his application for legal aid to seek an  
7 order relating to the residence of the child.

8 ***ISSUE 2: THE COSTS ORDERS***

9 12. The Applicant seeks a LAC in respect of costs orders made against him in the  
10 contested substantive matters relating to the dissolution of the parties' marriage. The  
11 Applicant is essentially seeking to appeal the court's decisions with respect to those  
12 costs. The applicant stated that he was seeking a "*Court Order immediately*  
13 *discharging all costs orders*" and explained that: "*the current costs orders are unjust,*  
14 *grossly inappropriate and preventing the clean break philosophy from progressing*"  
15 and also that they were "*...creating unnecessary challenges with regard to finances,*  
16 *and will only invite further litigation for maintenance orders, and thus further conflict*  
17 *should those not be mitigated now*".

18 13. The Law states at s.4(1) that:

19 *"4. (1) Legal aid may be granted in proceedings before a court in the following*  
20 *cases -*

- 21 (a) *criminal proceedings on indictment;*  
22 (b) *criminal summary proceedings;*  
23 (c) *subject to subsections (3) and (5), civil proceedings in the*  
24 *Grand Court or a summary court; and*  
25 (d) *appeals in criminal and, subject to subsections (3) and*  
26 *(5), civil cases."*  
27

1           14.     The grant of a LAC for an appeal in a civil case is therefore restricted by the provisions  
2                   of s.4(3), s.4(4) and s.4(5) of the Law which provide:

3                   “(3)       *Legal aid may be granted in family law proceedings but only if those*  
4                               *proceedings involve questions of -*  
5                               (i)       *residence of a child,*  
6                               (ii)       *contact with a child;*  
7                               (iii)       *access to a child;*  
8                               (iv)       *adoption of a child; or*  
9                               (v)       *maintenance of a child or other financial relief for the benefit a*  
10   *child.*

11  
12                   (4)       *In subsection (3), “family law proceedings” means proceedings brought*  
13                               *under-*  
14                               (i)       *the Adoption of Children Law (2003 Revision);*  
15                               (ii)       *the Affiliation Law (1995 Revision);*  
16                               (iii)       *the Children Law, (2012 Revision);*  
17                               (iv)       *the Maintenance Law (1996 Revision);*  
18                               (v)       *the Matrimonial Causes Law (2005 Revision); and*  
19                               (vi)       *the Succession Law (2006 Revision).*

20  
21                   (5)       *Legal aid shall not be granted in the following proceedings -*  
22                               (i)       *proceedings wholly or partly in respect of defamation;*  
23                               (ii)       *relator actions;*  
24                               (iii)       *proceedings relating to any election; or*  
25                               (iv)       *proceedings in respect of other prescribed areas of civil law.”*  
26

27           15.     It is clear that proceedings brought under the various pieces of legislation listed in s.  
28                   4(4) are eligible for the award of a LAC if they relate to the narrow scope stated in  
29                   s.4(3).

30           16.     An appeal in family proceedings is also similarly limited. I have considered the  
31                   Applicant’s reasons for seeking a LAC as well as the judgments in which the costs  
32                   orders were made, as well as the nature of those proceedings which related to, whether  
33                   there is sufficient evidence to satisfy the court that the wife’s Petition was proved and  
34                   the division of matrimonial property including the appropriate division of pension  
35                   contributions paid during the marriage, and I am satisfied that these matters do not fall  
36                   within that narrow ambit of “family proceedings” under the Law.

1 17. The appeal does not relate to:

2 *“questions of - (a) residence of a child, (b) contact with a child; (c) access to a*  
3 *child; (d) adoption of a child; or (e) maintenance of a child or other financial*  
4 *relief for the benefit a child.”*

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6 18. The Director cannot grant a LAC to cover an appeal of the costs orders under s.4(1)(d)  
7 as such an appeal does not relate to “family proceedings” under the Law. There is  
8 therefore no ground to interfere with the decision of the Legal Aid Director on this  
9 aspect of her decision on the application.

10 ***ISSUE 3: THE TEMPORARY REMOVAL OF THE CHILD FROM THE JURISDICTION***

11 19. With respect to that part of the application that relates to the temporary removal of the  
12 child from the jurisdiction, the Applicant stated that he required assistance for the  
13 *“Court order granting temporary removal of my child from the jurisdiction to visit with*  
14 *my family in Florida.”*

15 20. The Applicant explains:

16 *“There is currently a prohibited steps order in place, and the mother has refused to*  
17 *provide the necessary approvals to travel despite suggestions by Justice Mangatal;*

18 *All attempts to communicate with her attorney have been met with silence;*

19 *The Court Administration’s Family Processing (sic) (Proceedings) Unit has*  
20 *attempted to assist, however, that too has proved futile with no response*  
21 *forthcoming.”*

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1        21.     The Director found that the Applicant is articulate enough to make such an application  
2                    to the Court directly. She considered the fact that the Applicant had adequately  
3                    represented himself in the proceedings thus far. In coming to this conclusion it is  
4                    apparent that she also considered the affidavits filed by the Applicant in the  
5                    matrimonial proceedings. The Director very helpfully set out that:

6                    *“The Applicant should make an application to the court in the normal way,*  
7                    *supported by affidavit outlining the request, attempts to settle that issue and the*  
8                    *usual details that would be included for such travel request for the court to*  
9                    *consider.”*

10        22.     In his application to the Director the Applicant has already identified some of these  
11                    relevant factors.

12        23.     I agree that the nature of such an application is not so complex or complicated to merit  
13                    the grant of a LAC.

14        24.     The appeal is accordingly refused.

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**Dated this the 22<sup>nd</sup> September 2017**



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20     **Carter J (Actg.)**  
21     **Acting Judge of the Grand Court**

